

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BERNARD BARTON,)	CASE NO. 7:11CV5000
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
DAVE HEINEMAN, et al.,)	
)	
Defendants.)	

This matter is before the court on its own motion. On April 15, 2011, the court entered a Memorandum and Order allowing Plaintiff to amend his Complaint in order to clearly state a claim upon which relief may be granted against Defendants. (Filing No. [6](#).) Plaintiff filed an Amended Complaint on May 31, 2011. (Filing No. [9](#).) After reviewing the Amended Complaint, the court finds that Plaintiff's claims may proceed and that service on Defendants is now warranted. Although the court finds that Plaintiff's claims may proceed against Defendants, the court cautions Plaintiff that this is only a preliminary determination based solely on the allegations of the Amended Complaint and is not a determination of the merits of Plaintiff's claims or potential defenses thereto.

IT IS THEREFORE ORDERED that:

1. To obtain service of process on Defendants, Plaintiff must complete and return the summons forms that the Clerk of the court will provide. The Clerk of the court shall send SIX summons forms and SIX USM-285 forms to Plaintiff, together with a copy of this Memorandum and Order. Plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of the court. In the absence of the forms, service of process cannot occur;
2. Upon receipt of the completed forms, the Clerk of the court will sign the summons forms, to be forwarded with a copy of the Amended Complaint to the U.S. Marshal for service of process. The Marshal shall serve summons and the Amended Complaint without payment of costs or fees. Service may be by certified mail pursuant to [Federal Rule of Civil Procedure 4](#) and Nebraska law in the

discretion of the Marshal. The Clerk of the court will copy the Amended Complaint, and Plaintiff does not need to do so;

3. Federal Rule of Civil Procedure 4 requires service of the complaint on a defendant within 120 days of filing the complaint. However, because in this order Plaintiff is informed for the first time of these requirements, Plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order to complete service of process;

4. Plaintiff is hereby notified that failure to obtain service of process on a defendant within 120 days of the date of this order may result in dismissal of this matter without further notice as to such defendant. A defendant has 21 days after receipt of the summons to answer or otherwise respond to a complaint;

5. The Clerk of court is directed to set a pro se case management deadline in this case with the following text: "November 4, 2011: Check for completion of service of summons"; and

6. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court. Plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal.

Dated this 8th day of July, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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